UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA

v. Criminal No.: 13- 0184(ESH)

Anthony C.Y. Cheng, et al.

Motion to Continue Trial From December 4, 2013 to May 1, 2014
Or Thereafter Due to Insufficient Time to Properly Prepare and
Kenneth Robinson Then Being Re-Instated to Be Lead Trial Counsel

Counsel for Defendants Cheng, respectfully request that this case be continued until May 1, 2014 or thereafter, the next date available for the government and the court. The basis is twofold.

First counsel have worked many hours preparing for trial thus far over two months, yet is nowhere near having fully completed to even interpret the many undercover tapes so that they are fully understandable. Both defendants join in this motion and state that they cannot be prepared to properly be ready to defend the cases by December 4, 2013. There are numerous investigative efforts to undertake to refute the testimony contemplated from various F.B.I. agents and in particular to cross-examine the " star" government witness, Leon Swain. Counsel cannot discuss the areas of cross examination now as it gives the government access to the defense to which it is not entitled at this time. This is an undercover sting directed against lead defendant Tony Cheng, Sr. and his lack of predisposition; evidence of his rejection of the solicited bribe from Mr. Swain and others is crucial to demonstrate that the

Government knew and/or should have known that Mr. Cheng had never solicited a

bribe in the past before and in fact rejected the solicitation from Mr. Swain and others in this case prior to a payment made of $1,500 thereafter which defense submits was not a paid bribe either. Nor has Mr. Cheng ever demonstrated that he is corrupt in the past or present. Mr. Cheng is entitled as a matter of law to cross-examine on these points and then affirmatively present evidence to confirm the points counsel raises here. Hence, counsel assure the court that this continuance is for valid reasons and not to simply get a few extra months to delay the trial. The defense has several witnesses to locate and interview, as well as witnesses it needs to interview which will require much effort to make them cooperate truthfully.

As a second point to this continuance motion for a 5-month continuance the defendant Cheng, Sr. raises again his desire and demand to be defended by his first counsel of choice under his 6th Amendment rights. Mr. Cheng has instructed his daughter, Stephanie Cheng, to write a letter to the court stating his wishes as best he can and that letter is attached and incorporated herein by reference as Addendum "1". There Mr. Cheng states that he has been a close friend of counsel Robinson for over 20 years and that he trusts and respects Mr. Robinson's judgment on ever level. He has referred many of his Asian friends to Mr. Robinson to represent their business interests and their children who have been charged with criminal involvement. Mr. Cheng testified in a 3-week criminal case in 1990 for the government in a case where an employee of one of his restaurants was kidnapped while at work and a ransom was demanded. Mr. Robinson cross examined him for several hours through an interpreter and Mr. Cheng was so impressed by what he

saw and experienced that he thereafter retained Mr. Robinson to be his attorney on any matter involving litigation. Counsel is not saying that Mr. Norris cannot do a good job defending Mr. Cheng. Rather that Mr.Cheng knows Robinson and wants him to be chief counsel. Mr. Robinson brought Mr. Norris into this case because of his knowledge of Mr. Norris' abilities as both an investigative lawyer as well as trying cases. Robinson told Cheng a back up lawyer must be retained in order that no court be delayed unnecessarily and he, Cheng, be fully informed of what might occur prior to closure on this matter.

When government agents first visited Mr. Cheng in January 2013 Mr. Cheng called Robinson who responded. Since that date Robinson has spent much time with Cheng. He referred Tony Cheng, Jr. to Eric Kirchman and the representation has been far greater than merely satisfied. Robinson informed the Cheng family immediately that for almost 7 years he had been investigated by the office of D.C. Bar counsel, had a 3 day hearing on the facts where no client testified, nor had complained about Robinson. He informed them of the 52 page opinion by Chairperson Bernius that he was " essentially blameless" and that Robinson had been candid, truthful and cooperative, while his son-in-law was evasive and "unworthy of belief." The son-in-law had represented the 2 clients who did not receive their funds timely from the trust account that Robinson's firm maintained. The son-in-law was responsible for keeping that account properly balanced and it was later learned in fact not balanced upon Bar's investigation. These facts were offered to the Chengs and now to this the court to state that Robinson was the recipient of a 7 month suspension sanction for having failed to properly supervise

his son-in-law whom he had trusted. It showed Robinson had a reason to fight for 7years defending his position so the client and now this court hopefully could or would fully understand that Robinson had in reality done nothing wrong in his mind, although the Bar Board of Directors believed he was negligent for having continued to trust the son-in-law, father of his 3 grandchildren, and thus that failure to follow behind what he believed that son-in-law had told him had been done was per se negligence. Robinson should have done the checking of the account himself rather than continue relying on what the son-in-law assured him was corrected. The mistake was finally corrected 3 years later and the client who did not even know she was owed a sum of $135.00 from a $4,100 settlement on a case handled by the son-in-law was paid from that account. At the time that that $135.00 was not disbursed to that client of the son-in-law Robinson had almost $8,000,000 in his operating account, his money. Mr. Cheng appreciated Robinson's honesty and retained him.

Now, some 8 months later, the District of Columbia Court of Appeals has acted and on August 22, 2013, it issued a 22 page opinion upholding the Board's recommendation of August 2012.(please read and incorporate herein as Addendum"2"). Robinson was ordered suspended for 7 months IMMEDIATELY. Thus Robinson informed the Chengs that day, the Chengs wrote the letter to this court on August 23, and it is identified herein as Addendum "1". The defendant cannot be ready in December regardless of whether Robinson is unable to assist the defense. Mr. Norris had long scheduled plans concerning trips and his family before the Chengs were indicted. He has thus missed at least 4 weeks due to travel. While

his associates have been engaged on preparation that is not Mr. Norris doing it. Mr. Cheng has never been charged or convicted before. He came to America in the early 1970's and spoke NO English. His English is acceptable at the work place but he is still not fluent. He is a bright man with honor who has built a remarkable success over 40 plus years by hard work and his business decisions. Now at age 66 he could lose all that over a $1,500 payment to Mr. Swain that he never understood was a bribe or a purchase of a benefit contrary to the law. He can be destroyed if he loses this case and he asks this court to allow him 5 more months to be prepared and thus not only better able to win a case he should win but be defended by the one lawyer he trusts and respects over all others.

The prosecutor has informed counsel that it will not oppose this motion and leave it to defense and the court as to whether it be granted or denied. The "sting" was during 2010, December, and July 2011. The defendants had no idea that there was an investigation until January 2013. Surely the court can and will appreciate that such a brief continuance is reasonable so the defense is properly prepared and preferred counsel can be reinstated by April 1 at the latest and be prepared to defend this case which can destroy the defendant. Robinson has informed the client that he will assist the defense while suspended, if the Bar permits, but charge no fee for that now, nor later, not ever so he can re enter the case prepared for trial.

In conclusion Counsel notes that the Bar Rules require Robinson to notify all D.C. Courts of his suspension, as well as clients as well as other Bars(here South Carolina and Maryland) and that has been done. Counsel must move to withdraw but has 30 days to do what must be done for the court, case and client. Thus, counsel Robinson

urges pleads that this court grant this motion for the reasons argued above. Counsel knows this court has broad discretion on this matter but asks the court to honor this request of Mr. Cheng and all clients and lawyers. Undersigned blundered in an innocent way having relied on and trusted his son-in-law, someone who turned out to be not only a liar but also lazy and unreliable.

WHEREFORE, it is respectfully requested that this court grant this plea for a 5 month continuance in order that the senior defendant Cheng and his son be properly prepared to defend them and Cheng senior have the benefit of the counsel of his choice.

Respectfully Submitted,

_____/s/_____

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Certificate of Service

I, Kenneth M. Robinson, certify service by email on Lionel Andre, Chief prosecutor on this case.
Done September 3, 2013

_____/s/_____

Kenneth M. Robinson

Addendum "1"

August 23, 2013

The Honorable Ellen Segal Huvelle
333 Constitution Avenue N.W.
Washington D.C. 20001
4th Floor, Chambers

Dear Judge Huvelle:

I am Stephanie Cheng Ruggeri, Tony Cheng's youngest daughter. I work closely with my father in both his business and personal matters and act as his main translator and communicator in relation to English-speaking and writing matters. My father asked me to write to you because he is unable to write and communicate effectively in the English language but he feels it is very important to convey to you this urgent request.

Mr. Robinson informed my father when he was under investigation that there was a pending recommendation for a 7-month suspension that was before the DC Court of Appeals. At that time, the issue was whether the suspension would be 1 month or 7 months and Mr. Robinson believed that he would have a good chance for the 7 months to be reduced to 1-3 months. He agreed to represent my father as long as he was not suspended but Mr. Robinson made it clear that if he was suspended he would be of assistance in any way that was acceptable to the Bar but he would not act in any way as my father's lawyer.

Today, Mr. Robinson informed my father and myself that the court has indeed suspended him for 7 months. Therefore it was my obligation and duty to write to you urgently on behalf of my father because of his language barrier. My father does not read or write English. He only possesses a 3rd grade education from China and then when he moved to Hong Kong as an 11 year old child, he repeated those 3 years of school but subsequently did not even finish the 7th grade. At age 16, he left Hong Kong to make his way to the US. In the last 40 years, he has been in the restaurant business in DC. In that time, he has had two lawyers that he trusted on matters of importance to him. The first one was the late Kenneth Munday whom he loved and revered. The second one has been Mr. Robinson who is my father's friend and someone my father trusts in every way. My father desperately wants me to express to you how important it is if you would please consider continuing the trial until late April 2014, when Mr. Robinson will be reinstated and can handle his case as his chief trial counsel.

Three months ago, Mr. Robinson introduced our family to Mr. Norris as a precaution and backup, should the court rule that the seven month suspension take effect and thus block Mr. Robinson from trying the case. It was a result of Mr. Robinson's insistence that we agreed to have a backup trial lawyer who would step in should Mr. Robinson not be able to complete the case. Mr. Robinson said the court had to have notice as early as possible about the potential suspension. My father did not want to have a backup lawyer and resisted meeting other lawyers. In fact, we met a total of three other lawyers before Mr. Robinson convinced us that Mr. Norris would be able to work with him and complete the case if that were required. But at no time did my father ever imagine that anyone other than Mr. Robinson would be responsible for trying the case. It was only because Mr. Robinson insisted that we get a backup lawyer that we did so.

I apologize for such long introductory remarks but my father is very upset that Mr. Robinson cannot try the case if you keep the December trial date. The case was indicted in June and we have waived a speedy trial act and my father is asking most respectfully that you allow this one continuance so that Mr. Robinson can serve out his suspension and return to try the case in late April. He has assured us that he will continue working on the case and will prepare as if he is trial counsel and charge no fee until he is reinstated.

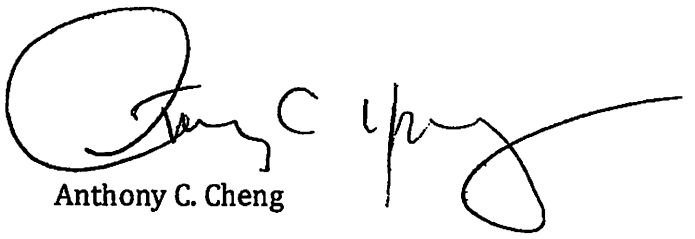
My father is very familiar with Mr. Robinson's reputation and trial skills and has even referred clients to him who have subsequently even thanked my father. My father was actually cross-examined by Mr. Robinson when he was testifying for the US Attorneys office in 1990 in a three-defendant criminal case and since then my father always talked about how Mr. Robinson cross-examined him in that case and stated that if he ever needed a lawyer in court he would only hire Mr. Robinson. With the history and friendship my father has had with Mr. Robinson for over 20 years, it is so important for the outcome of this trial that my father be allowed the right to have Mr. Robinson act as his trial counsel. Furthermore, since my father has never been arrested before and the trial would still be less than one year from indictment, we urgently request that the trial be pushed back so that Mr. Robinson can try the case.

I have discussed this letter in great detail with my father and have thoroughly translated and expressed his wishes and the sense of urgency in our request to you. My father is a hard-working and honorable family man so I ask you to please consider my father's request because the result of the trial will impact our family's life and could destroy my father's honorable reputation in the community. Thank you in advance for your attention to this request.

Respectfully yours,

Stephanie Cheng Ruggeri

I, Anthony C. Cheng, acknowledge that my daughter, Stephanie, translated this letter in Mandarin and it effectively and accurately states the position I wish to express to the court.



Anthony C. Cheng

Addendum 2

DISTRICT OF COLUMBIA COURT OF APPEALS

No. 12-BG-1206

IN RE KENNETH M. ROBINSON, RESPONDENT.

A Member of the Bar of the
District of Columbia Court of Appeals
(Bar Registration No. 51706)

On Report and Recommendation
of the Board on Professional Responsibility
(BDN-320-06)

(Argued March 5, 2013 Decided August 22, 2013)

W. Gary Kohlman, with whom *Jacob A. Stein* was on the brief, for respondent.

Jennifer P. Lyman, Senior Assistant Bar Counsel, with whom *Wallace E. Shipp, Jr.*, Bar Counsel, and *Jelani Lowery*, Senior Law Clerk, were on the brief, for the Office of Bar Counsel.

Before OBERLY and BECKWITH, *Associate Judges*, and STEADMAN, *Senior Judge*.

STEADMAN, *Senior Judge*: The Board on Professional Responsibility ("Board") has unanimously recommended that respondent Kenneth M. Robinson be suspended from the practice of law in the District of Columbia for a period of seven months. The Board based this recommended sanction on its conclusion that

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Before OBERLY and BECKWITH, *Associate Judges*, and STEADMAN, *Senior Judge*.

STEADMAN, *Senior Judge*: The Board on Professional Responsibility ("Board") has unanimously recommended that respondent Kenneth M. Robinson be suspended from the practice of law in the District of Columbia for a period of seven months. The Board based this recommended sanction on its conclusion that

respondent had violated Rules of Professional Conduct 1.15 (a) (negligently misappropriating client funds), 1.15 (b) (failing to promptly deliver funds to a client),[1] and 5.1 (a) (failure to assure firm compliance with disciplinary rules). The Board's recommended sanction differs from that of the Hearing Committee, which recommended a thirty-day suspension for what it viewed as a "per se" violation of Rule 1.15 (a), dealing with misappropriation, and a minimal violation of Rule 1.15 (b), dealing with delivery of client funds.[2] Respondent challenges the Board's recommended sanction, urging this court to adopt at most the Hearing Committee's sanction recommendation. Respondent maintains that he reasonably relied on his associate attorney to manage the trust account and therefore he did not engage in negligent misappropriation. In addition, respondent argues that the sanction is "unjust and out of proportion" with other sanctions imposed in comparable cases.[3] Disagreeing with respondent, we accept the recommended sanction of the Board and impose a seven-month suspension.

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[1] Subsequent to the events at issue here, the notice and prompt payment provision of Rule 1.15 (b) was moved to Rule 1.15 (c).

[2] The Hearing Committee found that respondent had not violated Rule 5.1 (a) or (b) by any failure to supervise or assure firm compliance with the Rules.

[3] We interpret respondent's brief as challenging the Board's conclusion that he violated Rules 1.15 (a) and 5.1 (a). Because respondent does not challenge the Board's conclusion that he violated Rule 1.15 (b), we need not address it here.

I.

A.

The basic facts relevant to the matter before us are largely undisputed and may be recounted as follows. Respondent has long been a well-respected member of the District of Columbia Bar, practicing primarily criminal defense. For five years prior to 1999, one of his partners, Nick Hantzes, focused on personal injury work and was responsible for managing the firm's accounts. In mid-1999, respondent hired his son-in-law, Nikolaos Kourtesis. About the same time respondent hired Kourtesis, Hantzes left the firm and respondent delegated responsibility for the daily administration of the firm's trust account to Kourtesis.[4] Kourtesis was at the time a member of the Maryland and New Jersey Bars, and had practiced personal injury law with a law firm in Virginia for two and one-half years prior to joining respondent's firm.[5]

Respondent's firm had both an operating account and a trust account at Riggs Bank. On May 14, 2005, prior to the operative events of this case, Riggs

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[4] Both parties, the Hearing Committee, and the Board use "trust account" and "escrow account" interchangeably. This opinion will use the term trust account.

[5] Kourtesis did not become a member of the District of Columbia Bar until December 2005.

Bank was taken over by PNC Bank, which assigned both accounts new numbers. Kourtesis established protocols for handling settlements and disbursements, and maintained the files for each of the personal injury cases. His responsibilities also included reconciling the trust account and keeping a running balance. However, respondent remained the sole signatory on both accounts and he reviewed the monthly trust account statements as well as canceled checks, confirming his signature, the amounts, payees, and the checks' relation to the firm's business. It was their practice to discuss the case file together whenever Kourtesis presented a check drawn from the trust account to respondent for his signature.

For five years, Kourtesis managed the trust account without incident. But on October 21, 2005, the trust account was overdrawn. On November 22, the trust account was overdrawn again. These overdrafts resulted in the depletion of funds in the trust account belonging to two clients, Ms. Maureane O'Shaugnessy and Ms. Jeri Waddell. To fully elucidate the events leading up to the two overdrafts, we must first describe the representation by respondent of a client in a criminal matter.

In July of 2005, respondent began representing Gerard W. Kiley in connection with criminal charges stemming from an incident where Kiley, a Vietnam War veteran, threw a glass of red wine in the face of the visiting Prime

Minister of Vietnam. Respondent negotiated a fee rate with Kiley that provided for a flat fee of $7,500 if the case was resolved at the initial hearing, $15,000 if the case was resolved after the hearing but before trial, and $20,000 if the case proceeded to trial. The initial fee of $7,500 was paid in installments, with each payment deposited in the firm's operating account. By September 29, 2005, it became clear that the case would proceed to trial in October, so respondent requested the second payment of $7,500 per the agreement. In a letter, respondent reminded his client that after the $7,500 payment, he would still owe an additional $5,000 that would be held in escrow until after the trial was completed.

On October 3, respondent received checks of $7,500 and $5,000 from Kiley's supporters. Respondent endorsed the $7,500 check with the notation, "deposit to acct. # ******0623," the firm's PNC Bank operating account on October 5. That same day, respondent endorsed the $5,000 check to be deposited in the trust account. He signed the check and applied a stamp stating "For Deposit Only Law Office of Kenneth M. Robinson Escrow Account." After respondent endorsed the check, someone wrote the Riggs Bank trust account number (-4609) on the check underneath the image of the stamp.[6] An unknown person prepared

[6] Recall that at this time, PNC Bank had taken over Riggs Bank and replaced the Riggs Bank account numbers with new ones.

(continued...)

the deposit slip, writing the Riggs Bank trust account number in the appropriate box. However, another unknown individual[7] wrote the PNC Bank *operating* account number above the Riggs Bank trust account number on the deposit slip. Thus, the $5,000 intended for the trust account was deposited in the operating account.

The Kiley case went to trial on October 18 and 19, and resulted in an acquittal. Two days later, respondent asked Kourtesis to draw a $5,000 check from the trust account payable to respondent. Kourtesis did so, noting on the check "Kiley - release funds." Respondent signed, endorsed, and deposited the check into the firm's operating account. Because the Kiley $5,000 check had been mistakenly deposited in the operating account, when respondent's check was presented on October 21, 2005, the trust account became overdrawn by $492.54. At the time, funds of two other clients, Ms. O'Shaugnessy[8] and Ms. Waddell,[9]

(...continued)

[7] The Hearing Committee Report made clear that no one had identified the individual(s) who prepared the deposit slip.

[8] Ms. O'Shaugnessy was one of Kourtesis's personal injury clients. He represented her in connection with a car accident. Kourtesis successfully negotiated a $120,000 settlement in favor of Ms. O'Shaugnessy, which was placed into the firm's trust account. After an initial disbursement, payments to doctors, and several rounds of communication between Ms. O'Shaugnessy and the firm,

(continued...)

were included in the existing $4,507.46 balance of the trust account before the overdraft.[10]

PNC Bank alerted respondent about the overdraft on October 21. Respondent, who testified that at the time he had no idea what would have caused the overdraft, immediately deposited $500 in the trust account to cover the overdraft, bringing the balance to $7.46. He instructed Kourtesis to find out what had happened, and Kourtesis confirmed that he would. At the hearing respondent could not recall if Kourtesis ever reported back to him. One month later, on November 25, the trust account was overdrawn a second time, when Ms.

(...continued)
respondent issued a check to Ms. O'Shaugnessy on October 2, 2005, in the amount of $1,451.03 which represented the remainder of the settlement funds. Ms. O'Shaugnessy did not cash this check until November 25, 2005, when it triggered the second overdraft.

[9] Ms. Waddell was one of Kourtesis's personal injury clients. He represented her in an action stemming from a car accident. Kourtesis handled all of the negotiations and settlements, securing a $4,100 settlement for Ms. Waddell, which was deposited in the firm's trust account in April 2005. From that sum, disbursements were made to the Robinson firm, Ms. Waddell, and Ms. Waddell's doctors totaling $3,965. When distributing the award, Kourtesis overlooked the fact that he negotiated a discount from Ms. Waddell's doctors, which resulted in $135 remaining in the trust account. Respondent was not personally involved in representing Ms. Waddell, and testified that he remained unaware she was owed $135 until October 2008, when he sent her the money.

[10] The record does not reveal to whom the remaining funds in the trust account prior to the overdraft belonged.

O'Shaugnessy cashed the check for $1,451.03 issued to her by respondent on October 7. See *supra* note 8. PNC Bank honored the check, but again notified respondent of the overdraft. Respondent deposited $1,500 in the account to bring the balance up to $56.43 – greater than $0, but still less than the $135 yet to be disbursed to Ms. Waddell. Again, respondent instructed Kourtesis to look into the cause of this overdraft and again, respondent could not recall at the hearing whether Kourtesis ever reported back to him with the results of his investigation. Respondent eventually paid Ms. Waddell the $135.00, some three years later, in October 2008. See *supra* note 9.

B.

PNC Bank notified Bar Counsel of the overdrafts in July 2006, and Bar Counsel opened its investigation in September 2006. Bar Counsel filed its petition specifying the charges against respondent on August 25, 2009. Before the Hearing Committee, Bar Counsel called two witnesses, Kourtesis and respondent. In its report, the Hearing Committee noted that it found Kourtesis to be "unworthy of belief," while finding respondent's testimony to be "sincere and believable." The Hearing Committee found that respondent violated Rules 1.15 (a) and (b) and recommended a suspension of thirty days. The Hearing Committee found that

respondent had misappropriated funds owed to two clients, but concluded that this was a "per se misappropriation, for which [r]espondent was essentially blameless." The Hearing Committee further found that respondent had reasonably relied on Kourtesis when he permitted Kourtesis to manage the firm's trust account and that Bar Counsel failed to prove that respondent had acted recklessly, or even negligently, with regards to the overdraft.[11]

Bar Counsel took exception to the Hearing Committee's report and the parties briefed and argued the matter before the Board. The Board then issued its report and recommended a seven-month suspension based on its conclusion that respondent engaged in negligent misappropriation and that he had violated Rule 5.1 (a) in addition to Rule 1.15 (a) and (b). The Board's report and recommendation differed from the Hearing Committee's in that it analyzed respondent's behavior both before and after the first overdraft occurred on October 21, 2005. The Board agreed with the Hearing Committee that respondent had acted reasonably prior to the first overdraft, but that his failure to follow up and fully investigate the cause of the overdraft amounted to negligence which resulted in the second overdraft and a continuing misappropriation of his clients' funds.

[11] The Hearing Committee focused only on the October overdraft and did not address the November overdraft as a possible misappropriation, apparently because Bar Counsel did not so argue before the Hearing Committee.

Thus, the Board found that Bar Counsel had proven respondent engaged in negligent misappropriation, which merited a six-month suspension. The Board also concluded that respondent violated Rule 5.1 (a) by failing to ensure firm compliance with the Rules of Professional Conduct. In doing so, it relied on essentially the same theory, that after the first overdraft, respondent should have been aware that the accounting practices in place at his firm had failed and that more needed to be done in the supervision of Kourtesis to ensure compliance with the Rules. For violating Rule 5.1 (a), the Board recommended an additional thirty-day suspension.

II.

While this court retains final authority on attorney discipline in the District of Columbia, *In re Shillaire*, 549 A.2d 336, 342 (D.C. 1988), we, like the Board itself, must accept the factual findings of the Hearing Committee, unless they are not supported by substantial evidence in the record. *In re Edwards*, 808 A.2d 476, 482 (D.C. 2002) ("*Edwards I*"); *In re Micheel*, 610 A.2d 231, 234 (D.C. 1992). However, where the question is one of ultimate fact – such as whether an attorney acted recklessly or negligently, we review the issue *de novo*. *In re Romansky*, 938 A.2d 733, 739 (D.C. 2007) (citing *In re Carlson*, 802 A.2d 341, 347 (D.C. 2002)

("[T]he question of whether Ms. Cafferty recklessly misappropriated client funds is a legal question which we review *de novo*.")).

Our jurisprudence has treated with especial rigor the duty of an attorney to handle client funds entrusted to the attorney's care. A client's trust in his lawyer is built on the foundation of "centuries of honesty and faithfulness" in the profession. *In re Addams*, 579 A.2d 190, 193-94 (D.C. 1990) (en banc). Few individual acts can impact the public's trust of the legal system more than an attorney who mishandles the money of a client. *Id.* The seriousness with which we view any violation is evidenced by our unwavering application of the principle that the appropriate sanction for misuse of client funds must be disbarment "unless it appears that the misconduct resulted from nothing more than simple negligence." *Id.* at 191.

With these general considerations in mind, we turn to the case at hand.

A.

We first address the Board's finding that respondent was not negligent with regards to the October 21, 2005, overdraft (disputed by Bar Counsel) and that he was negligent with regard to his actions following the overdraft (disputed by

respondent). Rule 1.15 (a) provides that a "lawyer shall hold property of clients or third persons that is in the lawyer's possession in connection with a representation separate from the lawyer's own property." The term misappropriation encompasses "any unauthorized use of client's funds entrusted to his or her lawyer," including any "unauthorized temporary use," whether or not the lawyer "derives any personal gain or benefit." *In re Edwards*, 990 A.2d 501, 518 (D.C. 2010) ("*Edwards II*") (citing *In re Anderson*, 778 A.2d 330, 335 (D.C. 2001)). The level of proof is not a demanding one here, for misappropriation occurs whenever "the balance in the [attorney's trust] account falls below the amount due to the client," making misappropriation "essentially a per se offense." *In re Anderson*, *supra*, 778 A.2d at 335 (citing *In re Micheel*, *supra*, 610 A.2d at 233).

Both the Hearing Committee and the Board agreed that a misappropriation occurred on October 21, 2005. These two bodies also agreed that respondent was not negligent leading up to the October 21 overdraft and resulting misappropriation. We also agree.[12] Prior to the overdraft that triggered Bar Counsel's investigation, respondent relied on Kourtesis to manage the firm's trust

[12] We need not determine whether a non-negligent misappropriation is any violation at all of Rule 1.15 (a), or if so, what an appropriate sanction might be, since we agree with the Board that respondent was subsequently negligent.

account. Both the Hearing Committee and the Board concluded it was reasonable for respondent to do so. Kourtesis had experience with personal injury law, and understood the mechanics of settlement agreements, trust accounts, and disbursement procedures. Bar Counsel argued that respondent acted negligently by failing to maintain a running balance of the trust account. In response, the Board quite rightly noted that, in this case, maintaining a running balance of the trust account would not have made a difference, because respondent reasonably believed the funds had been deposited in the correct account and the checkbook entry in the firm's running balance would have so indicated.

The time period following the initial overdraft is altogether another matter. We agree that respondent acted negligently following the first overdraft,[13] and his negligence left the funds in the trust account depleted such that the misappropriation continued and a second overdraft occurred. Given the importance placed upon the scrupulous care of client funds, the overdraft was a

[13] The parties spend considerable time debating whether, upon Bar Counsel's proof of a misappropriation, the burden shifted to respondent to show that he was not negligent, or whether Bar Counsel instead had the further duty to prove simple negligence. We need not address this issue since Bar Counsel in any event proved simple negligence in respondent's failure to act after the first overdraft. Bar Counsel acknowledges that it had the burden to prove any reckless or intentional misappropriation by respondent, and we agree with the Board that the evidence here did not establish misconduct at that level.

serious wake-up signal to the sole individual with ultimate responsibility for the trust account and a situation that mandated his personal continuing attention. The Board found that respondent's failure to pursue the matter in a more diligent fashion resulted in the second overdraft, which extended the misappropriation.[14]

After the first overdraft, a representative of the bank called respondent and informed him that the trust account had been overdrawn by $492. At the hearing, respondent admitted that at the time of the first overdraft, he well understood that the overdraft would trigger an automatic investigation by the Bar Counsel into his practice. Respondent asked Kourtesis to look into the problem and wrote a check to cover the deficit, but admitted that he never followed up with the matter and essentially washed his hands of the matter. The check barely covered the overdraft and left the trust account in a continuing depleted state. Nearly one month later, the trust account was overdrawn a second time. Respondent again asked Kourtesis to investigate the matter, and wrote a check to cover the deficit. At the hearing,

[14] The Board found fault with respondent for not carefully and promptly reviewing his monthly bank statements, which would have revealed the misapplied deposit after the October 21 overdraft and prior to the November 22 overdraft. Respondent challenges this conclusion, noting that the record is bare of any evidence that bank statements were rendered during that period and, if so, the date of their receipt. It is not unreasonable to think that at some point during the month, the statements would have arrived and should have been immediately examined, given the overdraft. In any event, our conclusion of negligence does not rest on this proposition.

respondent did not recall following up with Kourtesis even on the second overdraft. And again, the check written to cover the overdraft was insufficient to make the trust account whole.[15] In addition, respondent did not take control of the accounts away from Kourtesis after the second overdraft occurred.

In the end, respondent's argument comes down to his assertion that, just as he justifiably relied on Kourtesis prior to the October 21 overdraft, he reasonably relied on him to investigate the situation and set it aright. This argument also relates to the Rule 5.1 violation, to which we now turn.

B.

[15] *See In re Wendell Robinson*, 583 A.2d 691, 692 (D.C. 1990) (disbarring petitioner for misappropriation of funds despite the relatively small amount of money at stake). It appears that, by means not entirely clear, the trust account was finally brought up to the requisite level at the end of January 2006. Respondent's negligence also contributed to his violation of Rule 1.15 (b), as the money owed to Ms. Waddell remained unpaid until 2008, three years after the overdraft occurred. Respondent testified that he was unaware that Ms. Waddell was owed any money until Bar Counsel began investigating. He also placed blame on Kourtesis, who apparently misled respondent and Bar Counsel by claiming the Waddell case file had been lost or damaged during a flood at the warehouse. Regardless, respondent remained ultimately responsible for the trust account, and his failure to investigate the root of the misappropriation allowed one of his clients to remain unpaid for three years.

While respondent does not directly contest the Board's recommendation as to the Rule 5.1 violation, he does assert that it was "reasonable" for him to rely on his son-in-law, Kourtesis. Before the Hearing Committee, Bar Counsel argued that respondent violated both Rule 5.1 (a) and 5.1 (b) by unreasonably relying on what Bar Counsel termed the inexperienced and untrained Kourtesis to manage the firm's escrow account. The Hearing Committee disagreed, relying on *In re Cater*, 887 A.2d 1, 15 (D.C. 2005), to support its conclusion that respondent did not violate Rule 5.1 (a) or (b). The Hearing Committee found that respondent did have a system in place that provided for "timely review and internal control" of the subordinate lawyers, such as Kourtesis, and that this system had worked well for thirty years. The Hearing Committee also found that respondent fulfilled his own duties with regard to the trust account, as he reviewed the monthly bank statements and canceled checks and was the sole signatory on the account, compliant with this court's mandate in *In re Cater*, *supra*, 887 A.2d at 15-16. While acknowledging that respondent's supervision of Kourtesis was not perfect, the Hearing Committee concluded that it was reasonable to entrust Kourtesis with managing the trust account based on his training and experience and the firm's internal review system.

The Board agreed with the Hearing Committee that prior to the first overdraft, Bar Counsel had not shown that respondent's supervision of Kourtesis

fell below the standard required by Rule 5.1. However, the Board disagreed with the Hearing Committee's decision to view the adequacy of respondent's supervision "in gross" as opposed to evaluating separately the time before and after the first overdraft. The Board noted that after the overdraft, respondent asked Kourtesis to investigate the root of the problem, but never followed up. Respondent did the same thing after the second overdraft, leaving "the matter solely in Mr. Kourtesis's hands even though he clearly was on notice that something was amiss." In sum, the Board concluded that had respondent met the level of supervision required by Rule 5.1, both the "second overdraft and the continuing misappropriation" could have been avoided.

We agree with the Board that prior to the first overdraft, the system respondent had in place, while perhaps rudimentary, was adequate to address the needs of his law firm. However, after that overdraft, respondent was on notice that matters relating to the trust account were awry. To be sure, tasks in any organization need to be delegated, and views can reasonably differ as to the degree to which such delegation is proper and the degree of regular supervision to be provided. But, as already discussed, the area of proper treatment of client funds is a vital one, which respondent in part recognized by retaining complete control over ultimate disbursements. Here, we must agree with the unanimous judgment of

respondent's peers on the Board, themselves well versed in the rough and tumble of law practice, that once the alarm bell of an overdraft rang, the matter was too important to be left to a subordinate without at least diligent follow-up of any investigation by the subordinate into the apparent flaw. Regrettably, a conclusion of negligent misappropriation and a violation of Rule 5.1 (a) necessarily follow.

III.

We turn now to the sanction recommended by the Board. A sanction recommendation from the Board "comes to us with a strong presumption in favor of its imposition." *In re Silva*, 29 A.3d 924, 926-27 (D.C. 2011) (internal quotation marks and citation omitted). We adopt the recommended disposition of the Board "unless to do so would foster a tendency toward inconsistent dispositions for comparable conduct or would otherwise be unwarranted." D.C. Bar R. XI, § 9 (h)(1). "The rule requires that we enforce a general sense of equality in the sanctions handed out, but it otherwise commands that we should respect the Board's sense of equity in these matters unless that exercise of judgment proves to be unreasonable." *In re Silva*, *supra*, 29 A.3d at 927 (quoting *In re Goffe*, 641 A.2d 458, 464 n.7 (D.C. 1994)).

Respondent argues that the six-month suspension is inconsistent with sanctions imposed in other, non-misappropriation cases. While this may be true, this court has treated misappropriation cases differently: "Simply put, where client funds are involved, a more stringent rule is appropriate." *In re Micheel, supra*, 610 A.2d at 236. A six-month suspension is the norm as a starting point for negligent misappropriation cases. *In re Herbst*, 931 A.2d 1016, 1017 (D.C. 2007). *See, e.g.*, *In re Edwards*, 870 A.2d 90, 94 & n.4 (D.C. 2005) ("*Edwards III*") (citing cases).[16]

Here, the Board considered mitigating factors, such as respondent's "reputation for honesty and integrity, the fact that his clients did not file a complaint, his cooperation with Bar counsel, and his taking 'ultimate responsibility for the overdraft,' and . . . the fact that he is 'one of the few members of the bar engaged in the practice of street crime defense,'" but concluded that they did not "carry the day when balanced against the misappropriation, the failure to supervise Mr. Kourtesis adequately, the violation of Rule 1.15(b) and the failure to take steps to assure that Mr. Kourtesis was admitted to the D.C. Bar." The situation is

[16] Respondent argues that the six-month sanction has been applied only in cases where the attorney used the client's money for their own personal expenses. But misappropriation occurs whether or not the attorney derives any personal gain or benefit therefrom. *In re Pleshaw*, 2 A.3d 169, 173 (D.C. 2010). The presence of negligence is the key factor. Respondent urges us to accept the Hearing Committee's recommendation of a one-month sanction, but that was based on a far lesser view of respondent's conduct than that of the Board.

unfortunate, but given our standard of deference, we see no basis to reject the Board's carefully considered sanction recommendation.

Accordingly, respondent Kenneth M. Robinson is hereby suspended from the practice of law in the District of Columbia for a period of seven months. Respondent's attention is called to the requirements of D.C. Bar R. XI, § 14, including the affidavit of compliance.

ADDENDUM 3

From: "Andre, Lionel (USADC)" <Lionel.Andre@usdoj.gov>
Date: August 27, 2013, 2:07:57 PM EDT
To: Kenneth Robinson <kennethmrobinson@aol.com>, "kirchlaw@cs.com" <kirchlaw@cs.com>
Subject: RE: Motion to Continue Trial

Kenny,

I've discussed the matter with my Supervisor. The government will take "no position" on the defense's motion to continue the trial to April 2014.

Thanks,

-Lionel

From: Kenneth Robinson [mailto:kennethmrobinson@aol.com]
Sent: Tuesday, August 27, 2013 12:08 PM
To: kennethmrobinson@aol.com; Andre, Lionel (USADC); kirchlaw@cs.com
Subject: Re: Motion to Continue Trial

Lionel, I spoke to assistant Bar counsel about your Supervisor's question and was informed that my reinstatement should be immediate after serving the 7 months which began to run 8-22-13 provided Icomply with filing the Affidavit by end of this week which will be done, and notify the 4 clients in DC I have by Certified mail of the suspension. I have notified them all and will send those letters certified out by tomorrow. I have to notify, copy all to Maryland and South Carolina Bars of all this and put that I did so in the Affidavit I file by friday. So to answer the question "yes" I will be reinstated - unless I practice and violaste the ORDER and create a worse issue during the next 7 months. Believe me that all not happen. So let the boss know my answer and let me know if I can represent your office has no objection to a continuance to a time of about April 30 or May 1, 2014. However it goes thank you Lionel you are a decent man no matter how any- thing goes and I deeply appreciate it.
I will file my Motion tomorrow so please PLEASE let me know whether up or down decision. Ken
-----Original Message-----
From: kennethmrobinson <kennethmrobinson@aol.com>
To: Andre, Lionel (USADC) (USADC) <Lionel.Andre@usdoj.gov>
Cc: kennethmrobinson <kennethmrobinson@aol.com>
Sent: Tue, Aug 27, 2013 8:33 am
Subject: Re: Motion to Continue Trial
Good question. I believe so and am on way to Bar office to pick up instruction
and will call you this morning. There was never any required courses to take or
any of that but I will let you know.

Sent from my iPhone

On Aug 27, 2013, at 8:02 AM, "Andre, Lionel (USADC)" <Lionel.Andre@usdoj.gov> wrote:

> Kenny,
>
> My Section Chief wants to know whether you will automatically be reinstated
or
will you need to reapply and wait on a decision?
>
> -Lionel
>
> On Aug 26, 2013, at 6:24 PM,
"kennethmrobinson@aol.com<mailto:kennethmrobinson@aol.com>"
<kennethmrobinson@aol.com<mailto:kennethmrobinson@aol.com>> wrote:
>
> No problem just got to file as Tony is very upset. Thanks ken
>
> Sent from my iPhone
>
> On Aug 26, 2013, at 4:43 PM, "Andre, Lionel (USADC)"
<Lionel.Andre@usdoj.gov<mailto:Lionel.Andre@usdoj.gov>>
wrote:
>
> Kenny,
>
> I am still waiting to hear back from my Section Chief on whether we will
oppose or not oppose the motion to continue the trial to April 2014.
>
> Sorry for the delay.
>
> -Lionel
>
> Lionel André
> Assistant United States Attorney
> Fraud & Public Corruption Section
> U.S. Attorney's Office for the District of Columbia
> 555 Fourth Street, N.W.
> Room 5245
> Washington, D.C. 20530
> (202) 252-7818 (Office)
> (202) 815-4009 (Cell)
> (202) 307-2304 (FAX)
>
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